

Assembly Bill No. 762

CHAPTER 471

An act to amend Sections 1566.45, 1568.0832, and 1569.72 of the Health and Safety Code, relating to residential care facilities.

[Approved by Governor October 11, 2009. Filed with
Secretary of State October 11, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

AB 762, Bonnie Lowenthal. Residential facilities: bedridden persons.

Existing law provides for the licensing and regulation of community care facilities, residential care facilities for persons with chronic life-threatening illness, and residential care facilities for the elderly by the State Department of Social Services.

Under existing law, bedridden persons may be admitted to, and remain in, a community care facility, residential care facility for persons with chronic life-threatening illness, or a residential care facility for the elderly if the facility secures and maintains an appropriate fire clearance.

Existing law defines "nonambulatory persons" for purpose of inspections by the State Fire Marshal.

This bill would, for the purpose of fire clearance of these facilities, include within the definition of "nonambulatory person" a resident who is unable to independently transfer to and from bed but who does not need assistance turning and repositioning in bed.

The people of the State of California do enact as follows:

SECTION 1. Section 1566.45 of the Health and Safety Code is amended to read:

1566.45. (a) (1) For purposes of this section, "bedridden" means requiring assistance in turning and repositioning in bed or being unable to independently transfer to and from bed, except in a facility with appropriate and sufficient care staff, mechanical devices, if necessary, and safety precautions, as determined by the director in regulations.

(2) In developing the regulations for child residential facilities, the department shall take into consideration the size and weight of the child.

(3) For purposes of this section, the status of being bedridden shall not include having any illness that persists for 14 days or less.

(4) The determination of the bedridden status of persons with developmental disabilities shall be made by the Director of Social Services or his or her designated representative, in consultation with the Director of Developmental Services or his or her designated representative, after

consulting the resident's individual safety plan. The determination of the bedridden status of all other persons with disabilities who are not developmentally disabled shall be made by the Director of Social Services, or his or her designated representative.

(b) Bedridden persons may be admitted to, and remain in, residential facilities that secure and maintain an appropriate fire clearance. A fire clearance shall be issued to a facility in which one or more bedridden persons reside if either of the following conditions are met:

(1) The fire safety requirements are met. Clients who are unable to independently transfer to and from bed, but who do not need assistance to turn or reposition in bed, shall be considered nonambulatory for purposes of this paragraph.

(2) Alternative methods of protection are approved.

(c) (1) The department and the Office of the State Fire Marshal, in consultation with the State Department of Developmental Services, shall each promulgate regulations that meet all of the following conditions:

(A) Are consistent with subdivision (a).

(B) Are applicable to facilities regulated under this chapter, consistent with the regulatory requirements of the California Building Standards Code for fire and life safety for the respective occupancy classifications into which the State Department of Social Services' community care licensing classifications fall.

(C) Permit residents to remain in homelike settings.

(2) At a minimum, these regulations shall do both of the following with regard to a residential care facility that provides care for six or fewer residents, at least one of whom is bedridden:

(A) Clarify the fire and life safety requirements for a fire clearance for the facility.

(B) Identify procedures for requesting the approval of alternative means of providing equivalent levels of fire and life safety protection. Either the facility, the resident or resident's representative, or local fire official may request from the Office of the State Fire Marshal a written opinion concerning the interpretation of the regulations promulgated by the State Fire Marshal pursuant to this section for a particular factual dispute. The State Fire Marshal shall issue the written opinion within 45 days following the request.

(d) For facilities that care for six or fewer clients, a local fire official shall not impose fire safety requirements stricter than the fire safety regulations promulgated for the particular type of facility by the Office of the State Fire Marshal or the local fire safety requirements imposed on any other single family dwelling, whichever is more strict.

(e) This section and any regulations promulgated thereunder shall be interpreted in a manner that provides flexibility to allow bedridden persons to avoid institutionalization and be admitted to, and safely remain in, community-based residential care facilities.

SEC. 2. Section 1568.0832 of the Health and Safety Code is amended to read:

1568.0832. (a) (1) For purposes of this section, “bedridden” means requiring assistance in turning and repositioning in bed or being unable to independently transfer to and from bed, except in a facility with appropriate and sufficient care staff, mechanical devices, if necessary, and safety precautions, as determined by the director in regulations.

(2) For purposes of this section, the status of being bedridden shall not include having any illness that persists for 14 days or less.

(3) The determination of the bedridden status of persons with developmental disabilities shall be made by the Director of Social Services or his or her designated representative, in consultation with the Director of Developmental Services or his or her designated representative, after consulting the resident’s individual safety plan. The determination of the bedridden status of all other persons with disabilities who are not developmentally disabled shall be made by the Director of Social Services, or his or her designated representative.

(b) Bedridden persons may be admitted to, and remain in, residential facilities that secure and maintain an appropriate fire clearance. A fire clearance shall be issued to a facility in which one or more bedridden persons reside if either of the following conditions are met:

(1) The fire safety requirements are met. Residents who are unable to independently transfer to and from bed, but who do not need assistance to turn or reposition in bed, shall be considered nonambulatory for purposes of this paragraph.

(2) Alternative methods of protection are approved.

(c) (1) The department and the Office of the State Fire Marshal, in consultation with the State Department of Developmental Services, shall each promulgate regulations that meet all of the following conditions:

(A) Are consistent with subdivision (a).

(B) Are applicable to facilities regulated under this chapter, consistent with the regulatory requirements of the California Building Standards Code for fire and life safety for the respective occupancy classifications into which the State Department of Social Services’ community care licensing classifications fall.

(C) Permit residents to remain in homelike settings.

(2) At a minimum, these regulations shall do both of the following with regard to a residential care facility that provides care for six or fewer clients, at least one of whom is bedridden:

(A) Clarify the fire and life safety requirements for a fire clearance for the facility.

(B) Identify procedures for requesting the approval of alternative means of providing equivalent levels of fire and life safety protection. Either the facility, the resident or resident’s representative, or local fire official may request from the Office of the State Fire Marshal a written opinion concerning the interpretation of the regulations promulgated by the State Fire Marshal pursuant to this section for a particular factual dispute. The State Fire Marshal shall issue the written opinion within 45 days following the request.

(d) For facilities that care for six or fewer clients, a local fire official shall not impose fire safety requirements stricter than the fire safety regulations promulgated for the particular type of facility by the Office of the State Fire Marshal or the local fire safety requirements imposed on any other single family dwelling, whichever is more strict.

(e) This section and any regulations promulgated thereunder shall be interpreted in a manner that provides flexibility to allow bedridden persons to avoid institutionalization and be admitted to, and safely remain in, community-based residential care facilities.

SEC. 3. Section 1569.72 of the Health and Safety Code is amended to read:

1569.72. (a) Except as otherwise provided in subdivision (d), no resident shall be admitted or retained in a residential care facility for the elderly if any of the following apply:

(1) The resident requires 24-hour, skilled nursing or intermediate care.

(2) The resident is bedridden, other than for a temporary illness or for recovery from surgery.

(b) (1) For the purposes of this section, “bedridden” means requiring assistance in turning and repositioning in bed or being unable to independently transfer to and from bed, except in a facility with appropriate and sufficient care staff, mechanical devices, if necessary, and safety precautions, as determined by the director in regulations.

(2) The determination of the bedridden status of persons with developmental disabilities shall be made by the Director of Social Services or his or her designated representative, in consultation with the Director of Developmental Services or his or her designated representative, after consulting the resident’s individual safety plan. The determination of the bedridden status of all other persons with disabilities who are not developmentally disabled shall be made by the Director of Social Services, or his or her designated representative.

(c) Notwithstanding paragraph (2) of subdivision (a), bedridden persons may be admitted to, and remain in, residential care facilities for the elderly that secure and maintain an appropriate fire clearance. A fire clearance shall be issued to a facility in which one or more bedridden persons reside if either of the following conditions are met:

(1) The fire safety requirements are met. Residents who are unable to independently transfer to and from bed, but who do not need assistance to turn or reposition in bed, shall be considered nonambulatory for purposes of this paragraph.

(2) Alternative methods of protection are approved.

(d) (1) For purposes of this section, “temporary illness” means any illness which persists for 14 days or less.

(e) A bedridden resident may be retained in a residential care facility for the elderly in excess of 14 days if all of the following requirements are satisfied:

(1) The facility notifies the department in writing regarding the temporary illness or recovery from surgery.

(2) The facility submits to the department, with the notification, a physician and surgeon's written statement to the effect that the resident's illness or recovery is of a temporary nature. The statement shall contain an estimated date upon which the illness or recovery will end or upon which the resident will no longer be confined to a bed.

(3) The department determines that the health and safety of the resident is adequately protected in that facility and that transfer to a higher level of care is not necessary.

(4) This section does not expand the scope of care and supervision of a residential care facility for the elderly.

(f) Notwithstanding the length of stay of a bedridden resident, every facility admitting or retaining a bedridden resident, as defined in this section, shall, within 48 hours of the resident's admission or retention in the facility, notify the local fire authority with jurisdiction in the bedridden resident's location of the estimated length of time the resident will retain his or her bedridden status in the facility.

(g) Nothing in this section shall be used for purposes of Section 1569.70 to determine the appropriateness of residents being admitted or retained in a residential care facility for the elderly on the basis of health-related conditions and the need for these services until the three levels of care set forth in Section 1569.70 are fully implemented. This section shall not prohibit the Community Care Licensing Division of the State Department of Social Services from continuing to implement the regulations of Article 8 (commencing with Section 87700) of Chapter 8 of Division 6 of Title 22 of the California Code of Regulations, as promulgated and approved on February 13, 1990.

(h) (1) The department and the Office of the State Fire Marshal, in consultation with the State Department of Developmental Services, shall each promulgate regulations that meet all of the following conditions:

(A) Are consistent with subdivisions (a) to (f), inclusive.

(B) Are applicable to facilities regulated under this chapter, consistent with the regulatory requirements of the California Building Standards Code for fire and life safety for the respective occupancy classifications into which the State Department of Social Services' community care licensing classifications fall.

(C) Permit residents to remain in home-like settings.

(2) At a minimum, these regulations shall do both of the following with regard to a residential care facility that provides care for six or fewer residents, at least one of whom is bedridden:

(A) Clarify the fire and life safety requirements for a fire clearance for the facility.

(B) (i) Identify procedures for requesting the approval of alternative means of providing equivalent levels of fire and life safety protection.

(ii) Either the facility, the resident or resident's representative, or local fire official may request from the Office of the State Fire Marshal a written opinion concerning the interpretation of the regulations promulgated by the State Fire Marshal pursuant to this section for a particular factual dispute.

The State Fire Marshal shall issue the written opinion within 45 days following the request.

(i) For facilities that care for six or fewer clients, a local fire official may not impose fire safety requirements stricter than the fire safety regulations promulgated for the particular type of facility by the Office of the State Fire Marshal or the local fire safety requirements imposed on any other single family dwelling, whichever is more strict.

(j) This section and any regulations promulgated thereunder shall be interpreted in a manner that provides flexibility to allow bedridden persons to avoid institutionalization and be admitted to, and safely remain in, community-based residential care facilities.